IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1289 of 1998

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RN TITIYA - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner No(s).: 1.
MS REETA CHANDARANA AGP for Respondent No(s).: 1,2.
RULE SERVED for Respondent No(s).: 3.

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CORAM :HON'BLE MR.JUSTICE D.H.WAGHELA

Date : 06/07/2005

ORAL ORDER

1. This petition under Article 226 of the Constitution is filed with a prayer to direct the respondent authorities to treat the service of the petitioner for the period from 20.6.1970 to 20.5.1971 as continuous for the purpose of pension and to direct payment of all financial benefits flowing from that.

2. According to the statement of facts, the petitioner was appointed on 1.6.1970 as Medical Officer in Primary Health Centre, Vanthli and, upon his request for transfer to Junagadh being turned down, he resigned from that service on 20.5.1971. On the same day, he joined Civil Hospital at Junagadh. The record of service thereafter does not appear to be relevant for the purpose of deciding the issue raised in the petition.

3. According to the affidavit-in-reply of the Administrative Officer, Commissioner of Health Services (H), the petitioner had served before and after 20.5.1972 on two different cadres of Medical Officer Class II, namely,GPHS Class II and GMS Class II. Officers of these two departments were not inter-changeable and the petitioner had resigned from his earlier posting on his own accord and in his personal interest with such urgency that the petitioner had paid notice pay for immediate acceptance of his resignation. It is contended on behalf of the respondent that, under Rule 250 of the Bombay Civil Service Rules, service prior to 20.5.1971 was interrupted by resignation and could not be counted for the purpose of pension.

4. In view of the above controversy raised on behalf of the respondent, the petitioner relied upon a Resolution dated 2.1.1967, under which, if an employee had been working under any different branch under the same head of the department, or if an employee is appointed from one department to another department after his application made through proper channel, the earlier service can be considered for the purpose of fixation of pay and pension. Although a true and correct copy of the Resolution dated 2.1.1967 is not produced by the petitioner even as it is relied for the purpose of arguing that the respondent had power and authority to condone the break in service caused by resignation, it is obvious that the conditions contained in the said Resolution are not satisfied in the case of the petitioner. Therefore, the petitioner cannot claim the benefits under the said Resolution dated 2.1.1967. No other ground is canvassed for directing the respondent to treat the service put in by the petitioner for the period from 20.6.1970 to 20.5.1971 as continued for the purpose of pension.

5. In the above facts and circumstances, no case having been made out for grant of relief, the petition is rejected. Rule is discharged with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)